

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

HEARTBRAND BEEF, INC., §  
§  
Plaintiff, §  
§  
§  
V. § CIVIL ACTION NO. 6:08-cv-00062  
§  
LOBEL'S OF NEW YORK, LLC, §  
WORLDWIDE MEDIA, INC., §  
THOUGHT CONVERGENCE, INC. §  
AND YAHOO! INC., §  
§  
Defendants. §

**DEFENDANT YAHOO! INC.'S MOTION TO DISMISS**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Yahoo! Inc. ("Yahoo!") hereby moves this Court to dismiss plaintiff's complaint with prejudice. Plaintiff Heartbrand Beef, Inc.'s ("Heartbrand") Complaint against Yahoo! should be dismissed because: (1) Heartbrand fails to allege that it has enforceable trademark rights in the term AKAUSHI for cattle or beef; (2) Heartbrand fails to allege that Yahoo! is using the term AKAUSHI in commerce in a manner that can constitute trademark infringement; (3) Heartbrand fails to allege that Yahoo! is secondarily liable for the acts of the other defendants; and (4) Heartbrand fails to allege that any of the defendants have made any false or misleading statements about any of the parties' goods, services or commercial activities. In support of its motion, Yahoo! files concurrently herewith its Memorandum in Support of its Motion to Dismiss. A proposed order is attached hereto.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT  
YAHOO! INC.

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of October, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

***Counsel for Plaintiff:***

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Annalyn G. Smith

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HEARTBRAND BEEF, INC.,

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v.

LOBEL'S OF NEW YORK, LLC,  
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AND YAHOO! INC.,

Defendants.

CIVIL ACTION NO. 6:08-cv-00062

**ORDER ON DEFENDANT YAHOO! INC.'S MOTION TO DISMISS**

This matter having come before this Court on Defendant Yahoo! Inc.'s Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and it appearing from the papers submitted by the parties and the arguments of counsel that Defendant Yahoo! Inc. is entitled to the relief set forth below, it is hereby:

ORDERED THAT Defendant Yahoo!'s motion to dismiss is granted and Plaintiff Heartbrand Beef Inc.'s Complaint against Defendant Yahoo! Inc. be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Signed this \_\_\_\_\_ date of \_\_\_\_\_, 2008.

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UNITED STATES DISTRICT JUDGE